

AMENDED IN SENATE MAY 8, 2013
AMENDED IN SENATE APRIL 9, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 470

Introduced by Senator Wright

February 21, 2013

An act to add Part 4 (commencing with Section 52200) to Division 1 of Title 5 of the Government Code, *and to amend Sections 33459, 33459.1, 33459.3, and 33459.8 of the Health and Safety Code*, relating to community development.

LEGISLATIVE COUNSEL'S DIGEST

SB 470, as amended, Wright. Community development: economic opportunity.

Existing law generally regulates the power of cities, counties, and cities and counties.

This bill would state the intent of the Legislature to promote economic development on a local level so that communities can enact local strategies to increase jobs, create economic opportunity, and generate tax revenue for all levels of government. The bill would define economic opportunity to include certain types of agreements, purposes, and ~~project's~~ *projects*, and declare that it is the policy of the state to protect and promote the sound development of economic opportunity in cities and counties, and the general welfare of the inhabitants of those communities through the employment of all appropriate means.

The bill would state that the creation of economic opportunity and the provisions for appropriate continuing land use and construction policies with respect to property acquired, in whole or in part, for

economic opportunity constitute public uses and purposes for which public money may be advanced or expended and private property acquired. The bill would provide that before certain returned city, county, or city and county property is sold or leased for development, the sale or lease shall first be approved by the legislative body, as specified. The bill would authorize a city, county, or city and county to establish a program under which it loans funds to owners or tenants for the purpose of rehabilitating commercial buildings or structures and to assist with the financing of facilities or capital equipment as part of an agreement that provides for the development or rehabilitation of property that will be used for industrial or manufacturing purposes, as specified.

Existing law, the Polanco Redevelopment Act, authorizes a former redevelopment agency to take any action that the agency determines is necessary, consistent with other state and federal laws, to remedy or remove a release of hazardous substances on, under, or from a project area, subject to specified conditions. Existing law requires agencies to request cleanup guidelines from the department or the California regional water quality control board before taking action to remedy or remove a release, immunizes an agency that remedies or removes a hazardous substance release from liability under specified state laws, and authorizes the recovery of cleanup and remedial costs from the liable party.

This bill would ~~authorize~~ revise the definition of agency as used in the Polanco Redevelopment Act to include a city, county, or city and county, and authorize a city, county, or city and county to exercise authority under these provisions to remedy or remove the release of hazardous substances ~~within its boundaries~~ from property within its jurisdiction that previously was within the jurisdiction of a former redevelopment agency, consistent with state and federal laws, as specified. ~~This bill would require a city, county, or city and county to request cleanup guidelines from the Department of Toxic Substances Control or a California regional water quality control board before taking an action under this authority, and limit the liability of a city, county, or city and county for taking an action under these provisions.~~ The bill would also make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 4 (commencing with Section 52200) is added
2 to Division 1 of Title 5 of the Government Code, to read:

3
4 PART 4. ECONOMIC OPPORTUNITY

5
6 CHAPTER 1. GENERAL PROVISIONS

7
8 52200. It is the intent of the Legislature to do all of the
9 following:

10 (a) Promote economic development on a local level so that
11 communities can enact local strategies to increase jobs, create
12 economic opportunity, and generate tax revenue for all levels of
13 government.

14 (b) Give local governments tools, at no cost to the state, that
15 allow local governments to use their funds in a manner that
16 promotes economic opportunity.

17 (c) With the loss of redevelopment funds, cities, counties, and
18 cities and counties need to continue certain powers afforded to
19 redevelopment agencies that were critical to economic
20 development, yet do not have an impact on schools and the state
21 budget.

22 52200.2. As used in this part “economic opportunity” means
23 any of the following:

24 (a) Development agreements or other agreements that create,
25 retain, or expand new jobs, in which the legislative body finds that
26 the agreement will create or retain at least one full-time equivalent,
27 permanent job for every thirty-five thousand dollars (\$35,000) of
28 city, county, or city and county investment in the project after full
29 capacity and implementation.

30 (b) Development agreements that increase property tax revenues
31 to all property tax collecting entities, in which the legislative body
32 finds that the agreement will result in an increase of at least 15
33 percent of total property tax resulting from the project at full
34 implementation when compared to the year prior to the property
35 being acquired by the government entity.

36 (c) Creation of affordable housing, if a demonstrated affordable
37 housing need exists in the community, as defined in the approved
38 housing element or regional housing needs assessment.

1 (d) Projects that meet the goals set forth in Chapter 728 of the
2 Statutes of 2008 and have been included in an adopted sustainable
3 communities strategy or alternative planning strategy or a project
4 that specifically implements the goals of those adopted plans.

5 (e) Transit priority projects, as defined in Section 21155 of the
6 Public Resources Code.

7 52200.4. It is declared to be the policy of the state:

8 (a) To protect and promote the sound development of economic
9 opportunity in cities and counties and the general welfare of the
10 inhabitants of those communities through the employment of all
11 appropriate means.

12 (b) That whenever the creation of economic opportunity in cities
13 and counties cannot be accomplished by private enterprise alone,
14 without public participation and assistance in the acquisition of
15 land, in planning and in the financing of land assembly, in the
16 work of clearance, and in the making of improvements necessary
17 therefor, it is in the public interest to advance or expend public
18 funds for these purposes, and to provide a means by which
19 economic opportunity can be created.

20 (c) That the creation of economic opportunity and the provisions
21 for appropriate continuing land use and construction policies with
22 respect to property acquired, in whole or in part, for economic
23 opportunity constitute public uses and purposes for which public
24 money may be advanced or expended and private property
25 acquired, and are governmental functions of state concern in the
26 interest of health, safety, and welfare of the people of the state and
27 cities and counties.

28 (d) That the necessity in the public interest for the provisions
29 of this part is declared to be a matter of legislative determination.

30 52200.6. This chapter shall not be interpreted to authorize the
31 use of eminent domain for economic development purposes.

32

33

CHAPTER 2. SALES AND LEASES

34

35 52201. (a) (1) Before any city, county, or city and county
36 property that is returned to the city, county, or city and county per
37 the long-range property management plan, pursuant to Section
38 34191.5 of the Health and Safety Code, is sold or leased for
39 economic development purposes, the sale or lease shall first be
40 approved by the legislative body by resolution after public hearing.

1 Notice of the time and place of the hearing shall be published in
2 a newspaper of general circulation in the community at least once
3 per week for at least two successive weeks, as specified in Section
4 6066, prior to the hearing.

5 (2) The city, county, or city and county shall make available,
6 for public inspection and copying at a cost not to exceed the cost
7 of duplication, a report no later than the time of publication of the
8 first notice of the hearing mandated by this section. This report
9 shall contain both of the following:

10 (A) A copy of the proposed sale or lease.

11 (B) A summary that describes and specifies all of the following:

12 (i) The cost of the agreement to the city, county, or city and
13 county, including land acquisition costs, clearance costs, relocation
14 costs, the costs of any improvements to be provided by the city,
15 county, or city and county, plus the expected interest on any loans
16 or bonds to finance the agreements.

17 (ii) The estimated value of the interest to be conveyed or leased,
18 determined at the highest and best uses permitted under the general
19 plan or zoning.

20 (iii) The estimated value of the interest to be conveyed or leased,
21 determined at the use and with the conditions, covenants, and
22 development costs required by the sale or lease. The purchase price
23 or present value of the lease payments which the lessor will be
24 required to make during the term of the lease. If the sale price or
25 total rental amount is less than the fair market value of the interest
26 to be conveyed or leased, determined at the highest and best use,
27 then the city, county, or city and county shall provide as part of
28 the summary an explanation of the reasons for the difference.

29 (iv) An explanation of why the sale or lease of the property will
30 assist in the creation of economic opportunity, with reference to
31 all supporting facts and materials relied upon in making this
32 explanation.

33 (v) The report shall be made available to the public no later than
34 the time of publication of the first notice of the hearing mandated
35 by this section.

36 (b) The resolution approving the lease or sale shall be adopted
37 by a majority vote unless the legislative body has provided by
38 ordinance for a two-thirds vote for that purpose and shall contain
39 a finding that the sale or lease of the property will assist in the

1 creation of economic opportunity. The resolution shall also contain
2 one of the following findings:

3 (1) The consideration is not less than the fair market value at
4 its highest and best use.

5 (2) The consideration is not less than the fair reuse value at the
6 use and with the covenants and conditions and development costs
7 authorized by the sale or lease.

8 (c) The provisions of this section are an alternative to any other
9 authority granted by law to cities to dispose of city-owned property.

10 52202. A city, county, or city and county may establish a
11 program under which it loans funds to owners or tenants for the
12 purpose of rehabilitating commercial buildings or structures.

13 52203. (a) As part of an agreement that provides for the
14 development or rehabilitation of property that will be used for
15 industrial or manufacturing purposes, a city, county, or city and
16 county may assist with the financing of facilities or capital
17 equipment, including, but not necessarily limited to, pollution
18 control devices.

19 (b) Prior to entering into an agreement for a development that
20 will be assisted pursuant to this section, a city, county, or city and
21 county shall find, after a public hearing, that the assistance is
22 necessary for the economic feasibility of the development and that
23 the assistance cannot be obtained on economically feasible terms
24 in the private market.

25

26 ~~CHAPTER 3. OTHER PROCEDURES AND ACTIVITIES~~

27

28 ~~52205. For purposes of this chapter, the following terms shall~~
29 ~~have the following meanings:~~

30 ~~(a) "Department" means the Department of Toxic Substances~~
31 ~~Control.~~

32 ~~(b) "Director" means the Director of Toxic Substances Control.~~

33 ~~(c) "Hazardous substance" means any hazardous substance as~~
34 ~~defined in subdivision (h) of Section 25281 of the Health and~~
35 ~~Safety Code, and any reference to hazardous substance in the~~
36 ~~definitions referenced in this section shall be deemed to refer to~~
37 ~~hazardous substance, as defined in this subdivision.~~

38 ~~(d) "Local agency" means a single local agency that is one of~~
39 ~~the following:~~

1 (1) ~~A local agency authorized pursuant to Section 25283 of the~~
2 ~~Health and Safety Code to implement Chapter 6.7 (commencing~~
3 ~~with Section 25280) of, and Chapter 6.75 (commencing with~~
4 ~~Section 25299.10) of, Division 20 of the Health and Safety Code.~~

5 (2) ~~A local officer who is authorized pursuant to Section 101087~~
6 ~~of the Health and Safety Code to supervise a remedial action.~~

7 (e) ~~“Qualified independent contractor” means an independent~~
8 ~~contractor who is any of the following:~~

9 (1) ~~An engineering geologist who is certified pursuant to Section~~
10 ~~7842 of the Business and Professions Code.~~

11 (2) ~~A geologist who is registered pursuant to Section 7850 of~~
12 ~~the Business and Professions Code.~~

13 (3) ~~A civil engineer who is registered pursuant to Section 6762~~
14 ~~of the Business and Professions Code.~~

15 (f) ~~“Release” means any release, as defined in Section 25320~~
16 ~~of the Health and Safety Code.~~

17 (g) ~~“Remedy” or “remove” means any action to assess, evaluate,~~
18 ~~investigate, monitor, remove, correct, clean up, or abate a release~~
19 ~~of a hazardous substance or to develop plans for those actions.~~
20 ~~“Remedy” includes any action set forth in Section 25322 of the~~
21 ~~Health and Safety Code and “remove” includes any action set forth~~
22 ~~in Section 25323 of the Health and Safety Code.~~

23 (h) ~~“Responsible party” means any person described in~~
24 ~~subdivision (a) of Section 25323.5 of the Health and Safety Code~~
25 ~~or subdivision (a) of Section 13304 of the Water Code.~~

26 52206. (a) (1) ~~A city, county, or city and county may take any~~
27 ~~actions that the city, county, or city and county determines are~~
28 ~~necessary and that are consistent with other state and federal laws~~
29 ~~to remedy or remove a release of hazardous substances on, under,~~
30 ~~or from property within its jurisdiction, whether the city, county,~~
31 ~~or city and county owns that property or not, subject to the~~
32 ~~conditions specified in subdivision (b). Unless an administering~~
33 ~~agency has been designated under Section 25262 of the Health~~
34 ~~and Safety Code, the city, county, or city and county shall request~~
35 ~~cleanup guidelines from the department or the California regional~~
36 ~~water quality control board before taking action to remedy or~~
37 ~~remove a release. The department or the California regional water~~
38 ~~quality control board shall respond to the city’s, county’s, or city~~
39 ~~and county’s request to provide cleanup guidelines within a~~
40 ~~reasonable period of time. The city, county, or city and county~~

1 shall thereafter submit for approval a cleanup or remedial action
 2 plan to the department or the California regional water quality
 3 control board before taking action to remedy or remove a release.
 4 The department or the California regional water quality control
 5 board shall respond to the city's, county's, or city and county's
 6 request for approval of a cleanup or remedial action plan within a
 7 reasonable period of time.

8 (2) The city, county, or city and county shall provide the
 9 department and local health and building departments, the
 10 California regional water quality control board, with notification
 11 of any cleanup activity pursuant to this section at least 30 days
 12 before the commencement of the activity. If an action taken by a
 13 city, county, or city and county or a responsible party to remedy
 14 or remove a release of a hazardous substance does not meet, or is
 15 not consistent with, a remedial action plan or cleanup plan
 16 approved by the department or the California regional water quality
 17 control board, the department or the California regional water
 18 quality control board that approved the cleanup or remedial action
 19 plan may require the city, county, or city and county to take, or
 20 cause the taking of, additional action to remedy or remove the
 21 release, as provided by applicable law. If an administering agency
 22 for the site has been designated under Section 25262 of the Health
 23 and Safety Code, any requirement for additional action may be
 24 imposed only as provided in Sections 25263 and 25265 of the
 25 Health and Safety Code. If methane or landfill gas is present, the
 26 city, county, or city and county shall obtain written approval from
 27 the California Integrated Waste Management Board prior to taking
 28 that action.

29 (b) Except as provided in subdivision (c), a city, county, or city
 30 and county may take the actions specified in subdivision (a) only
 31 under one of the following conditions:

32 (1) There is no responsible party for the release identified by
 33 the city, county, or city and county.

34 (2) A party determined by the city, county, or city and county
 35 to be a responsible party for the release has been notified by the
 36 city, county, or city and county or has received adequate notice
 37 from the department, a California regional water quality control
 38 board, the California Environmental Protection Agency, or other
 39 governmental agency with relevant authority and has been given
 40 60 days to respond and to propose a remedial action plan and

1 ~~schedule, and the responsible party has not agreed within an~~
2 ~~additional 60 days to implement a plan and schedule to remedy or~~
3 ~~remove the release that is acceptable to the city, county, or city~~
4 ~~and county and that has been found by the city, county, or city and~~
5 ~~county to be consistent, to the maximum extent possible, with the~~
6 ~~priorities, guidelines, criteria, and regulations contained in the~~
7 ~~National Contingency Plan and published pursuant to Section 9605~~
8 ~~of Title 42 of the United States Code for similar releases, situations,~~
9 ~~or events.~~

10 ~~(3) The party determined by the city, county, or city and county~~
11 ~~to be the responsible party for the hazardous substance release~~
12 ~~entered into an agreement with the city, county, or city and county~~
13 ~~to prepare a remedial action plan for approval by the department,~~
14 ~~the California regional water quality control board, or the~~
15 ~~appropriate local agency and to implement the remedial action~~
16 ~~plan in accordance with an agreed schedule, but failed to prepare~~
17 ~~the remedial action plan, failed to implement the remedial action~~
18 ~~plan in accordance with the agreed schedule, or otherwise failed~~
19 ~~to carry out the remedial action in an appropriate and timely~~
20 ~~manner. Any action taken by the city, county, or city and county~~
21 ~~pursuant to this paragraph shall be consistent with any agreement~~
22 ~~between the city, county, or city and county and the responsible~~
23 ~~party and with the requirements of the state or local agency that~~
24 ~~approved or will approve the remedial action plan and is overseeing~~
25 ~~or will oversee the preparation and implementation of the remedial~~
26 ~~action plan.~~

27 ~~(e) Subdivision (b) does not apply to either of the following:~~

28 ~~(1) A city, county, or city and county taking actions to~~
29 ~~investigate or conduct feasibility studies concerning a release.~~

30 ~~(2) A city, county, or city and county taking the actions specified~~
31 ~~in subdivision (a) if the city, county, or city and county determines~~
32 ~~that conditions require immediate action.~~

33 ~~(d) A city, county, or city and county may designate a local~~
34 ~~agency in lieu of the department or the California regional water~~
35 ~~quality control board to review and approve a cleanup or remedial~~
36 ~~action plan and to oversee the remediation or removal of hazardous~~
37 ~~substances from a specific hazardous substance release site in~~
38 ~~accordance with the following conditions:~~

39 ~~(1) The local agency may be so designated if it is designated as~~
40 ~~the administering agency under Section 25262 of the Health and~~

1 Safety Code. In that event, the local agency, as the administering
2 agency, shall conduct the oversight of the remedial action in
3 accordance with Chapter 6.65 (commencing with Section 25260)
4 of Division 20 of the Health and Safety Code and all provisions
5 of that chapter shall apply to the remedial action.

6 ~~(2) The local agency may be so designated if cleanup guidelines~~
7 ~~were requested from a California regional water quality control~~
8 ~~board, and the site is an underground storage tank site subject to~~
9 ~~Chapter 6.7 (commencing with Section 25280) of Division 20 of~~
10 ~~the Health and Safety Code, the local agency has been certified as~~
11 ~~a certified unified program agency pursuant to Section 25404.1 of~~
12 ~~the Health and Safety Code, the State Water Resources Control~~
13 ~~Board has entered into an agreement with the local agency for~~
14 ~~oversight of those sites pursuant to Section 25297.1 of the Health~~
15 ~~and Safety Code, the local agency determines that the site is within~~
16 ~~the guidelines and protocols established in, and pursuant to, that~~
17 ~~agreement, and the local agency consents to the designation.~~

18 ~~(3) A local agency may not consent to the designation by a city,~~
19 ~~county, or city and county unless the local agency determines that~~
20 ~~it has adequate staff resources and the requisite technical expertise~~
21 ~~and capabilities available to adequately supervise the remedial~~
22 ~~action.~~

23 ~~(4) (A) If a local agency has been designated pursuant to~~
24 ~~paragraph (2), the department or a California regional water quality~~
25 ~~control board may require that a local agency withdraw from the~~
26 ~~designation, after providing the city, county, or city and county~~
27 ~~with adequate notice, if both of the following conditions are met:~~

28 ~~(i) The department or a California regional water quality control~~
29 ~~board determines that a city's, county's, or city and county's~~
30 ~~designation of a local agency was not consistent with paragraph~~
31 ~~(2), or makes one of the findings specified in subdivision (d) of~~
32 ~~Section 101480 of the Health and Safety Code.~~

33 ~~(ii) The department or a California regional water quality control~~
34 ~~board determines that it has adequate staff resources and~~
35 ~~capabilities available to adequately supervise the remedial action,~~
36 ~~and it assumes that responsibility.~~

37 ~~(B) This paragraph shall not prevent a California regional water~~
38 ~~quality control board from taking any action pursuant to Division~~
39 ~~7 (commencing with Section 13000) of the Water Code.~~

1 ~~(5) If a local agency has been designated pursuant to paragraph~~
2 ~~(2), the local agency may, after providing the city, county, or city~~
3 ~~and county with adequate notice, withdraw from its designation~~
4 ~~after making one of the findings specified in subdivision (d) of~~
5 ~~Section 101480 of the Health and Safety Code.~~

6 ~~(e) To facilitate planning, the city, county, or city and county~~
7 ~~may require the owner or operator of any site within a project area~~
8 ~~to provide the city, county, or city and county with all existing~~
9 ~~environmental information pertaining to the site, including the~~
10 ~~results of any phase I or subsequent environmental assessment, as~~
11 ~~defined in Section 25200.14 of the Health and Safety Code, any~~
12 ~~assessment conducted pursuant to an order from, or agreement~~
13 ~~with, any federal, state or local agency, and any other~~
14 ~~environmental assessment information, except that which is~~
15 ~~determined to be privileged. The person requested to furnish the~~
16 ~~information shall be required only to furnish that information as~~
17 ~~may be within their possession or control, including actual~~
18 ~~knowledge of information within the possession or control of any~~
19 ~~other party. If environmental assessment information is not~~
20 ~~available, the city, county, or city and county may require the~~
21 ~~owner of the property to conduct an assessment in accordance with~~
22 ~~standard real estate practices for conducting phase I or phase II~~
23 ~~environmental assessments.~~

24 ~~52207. (a) Notwithstanding any other law, a city, county, or~~
25 ~~city and county that undertakes and completes an action, or causes~~
26 ~~another person to undertake and complete an action pursuant to~~
27 ~~Section 52206, as specified in subdivision (c), to remedy or remove~~
28 ~~a hazardous substance release on, under, or from property within~~
29 ~~its jurisdiction, in accordance with a cleanup or remedial action~~
30 ~~plan prepared by a qualified independent contractor and approved~~
31 ~~by the department or a California regional water quality control~~
32 ~~board or the local agency, as appropriate, pursuant to subdivision~~
33 ~~(b), is not liable, with respect to that release only, under Division~~
34 ~~7 (commencing with Section 13000) of the Water Code or Chapter~~
35 ~~6.5 (commencing with Section 25100), Chapter 6.7 (commencing~~
36 ~~with Section 25280), Chapter 6.75 (commencing with Section~~
37 ~~25299.10), or Chapter 6.8 (commencing with Section 25300), of~~
38 ~~Division 20 of the Health and Safety Code, or any other state or~~
39 ~~local law providing liability for remedial or removal actions for~~
40 ~~releases of hazardous substances. If the remedial action was also~~

1 performed pursuant to Chapter 6.65 (commencing with Section
2 25260) of Division 20 of the Health and Safety Code, and a
3 certificate of completion is issued pursuant to subdivision (b) of
4 Section 25264 of the Health and Safety Code, the immunity from
5 agency action provided by the certificate of completion, as
6 specified in subdivision (c) of Section 25264 of the Health and
7 Safety Code, shall apply to the city, county, or city and county, in
8 addition to the immunity conferred by this section. In the case of
9 a remedial action performed pursuant to Chapter 6.65 (commencing
10 with Section 25260) of Division 20 of the Health and Safety Code,
11 and for which the administering agency is a local agency, the
12 limitations on the certificate of completion set forth in paragraphs
13 (1) to (6), inclusive, of subdivision (c) of Section 25264 of the
14 Health and Safety Code are limits on any immunity provided for
15 by this section and subdivision (c) of Section 25264 of the Health
16 and Safety Code.

17 (b) Upon approval of any cleanup or remedial action plan,
18 pursuant to applicable statutes and regulations, the director or the
19 California regional water quality control board or the local agency,
20 as appropriate, shall acknowledge, in writing, within 60 days of
21 the date of approval, that upon proper completion of the remedial
22 or removal action in accordance with the plan, the immunity
23 provided by this section shall apply to the city, county, or city and
24 county.

25 (c) Notwithstanding any other law or policy providing for
26 certification by a person conducting a remedial or removal action
27 that the action has been properly completed, a determination that
28 a remedial or removal action has been properly completed pursuant
29 to this section shall be made only upon the affirmative approval
30 of the director or the California regional water quality control
31 board or the local agency, as appropriate. The department,
32 California regional water quality control board, or local agency,
33 as appropriate, shall, within 60 days of the date it finds that a
34 remedial action has been completed, notify the city, county, or city
35 and county in writing that the immunity provided by this section
36 is in effect.

37 (d) The approval of a cleanup or remedial action plan under this
38 section by a local agency shall also be subject to the concurrent
39 approval of the department or a California regional water quality

1 control board when the city, county, or city and county receiving
2 the approval formed the local agency.

3 (e) Upon proper completion of a remedial or removal action,
4 as specified in subdivision (c), the immunity from agency action
5 provided by the certificate of completion provided pursuant to
6 subdivision (c) of Section 25264 of the Health and Safety Code
7 and the immunity provided by this section extends to all of the
8 following, but only for the release or releases specifically identified
9 in the approved cleanup or remedial action plan and not for any
10 subsequent release or any release not specifically identified in the
11 approved cleanup or remedial action plan:

12 (1) Any employee or agent of the city, county, or city and
13 county, including an instrumentality of the city, county, or city
14 and county authorized to exercise some, or all, of the powers of a
15 city, county, or city and county and any employee or agent of the
16 instrumentality.

17 (2) Any person who enters into an agreement with a city, county,
18 or city and county for reuse of the property, if the agreement
19 requires the person to acquire property affected by a hazardous
20 substance release or to remove or remedy a hazardous substance
21 release with respect to that property.

22 (3) Any person who acquires the property after a person has
23 entered into an agreement with a city, county, or city and county
24 for reuse of the property as described in paragraph (2).

25 (4) Any person who provided financing to a person specified
26 in paragraph (2) or (3).

27 (f) Notwithstanding any other law, the immunity provided by
28 this section does not extend to any of the following:

29 (1) Any person who was a responsible party for the release
30 before entering into an agreement, acquiring property, or providing
31 financing, as specified in subdivision (e).

32 (2) Any person specified in subdivision (a) or (e) for any
33 subsequent release of a hazardous substance or any release of a
34 hazardous substance not specifically identified in the approved
35 cleanup or remedial action plan.

36 (3) Any contractor who prepares the cleanup or remedial action
37 plan, or conducts the removal or remedial action.

38 (4) Any person who obtains an approval, as specified in
39 subdivision (b), or a determination, as specified in subdivision (c),
40 by fraud, negligent or intentional nondisclosure, or

1 misrepresentation, and any person who knows before the approval
2 or determination is obtained or before the person enters into an
3 agreement, acquires the property or provides financing, as specified
4 in subdivision (e), that the approval or determination was obtained
5 by these means:

6 ~~(g) The immunity provided by this section is in addition to any~~
7 ~~other immunity of a city, county, or city and county provided by~~
8 ~~law.~~

9 ~~(h) This section shall not impair any cause of action by a city,~~
10 ~~county, or city and county or any other party against the person,~~
11 ~~firm, or entity responsible for the hazardous substance release that~~
12 ~~is the subject of the removal or remedial action taken by the city,~~
13 ~~county, or city and county or other person immune from liability~~
14 ~~pursuant to this section.~~

15 ~~(i) This section shall not apply to, or limit, alter, or restrict, any~~
16 ~~action for personal injury, property damage, or wrongful death.~~

17 ~~(j) This section shall not limit liability of a person described in~~
18 ~~paragraph (3) or (4) of subdivision (e) for damages under the~~
19 ~~Comprehensive Environmental Response, Compensation, and~~
20 ~~Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).~~

21 ~~(k) This section shall not establish, limit, or affect the liability~~
22 ~~of a city, county, or city and county for any release of a hazardous~~
23 ~~substance that is not investigated or remediated pursuant to this~~
24 ~~section or Chapter 6.65 (commencing with Section 25260) of~~
25 ~~Division 20 of the Health and Safety Code.~~

26 ~~(l) The immunity provided for by this section shall only be~~
27 ~~conferred if both of the following apply:~~

28 ~~(1) The action is in accordance with a cleanup or remedial action~~
29 ~~plan prepared by a qualified independent contractor and approved~~
30 ~~by the department or a California regional water quality control~~
31 ~~board or the local city, county, or city and county, as appropriate,~~
32 ~~pursuant to subdivision (b):~~

33 ~~(2) The remedial or removal action is undertaken and properly~~
34 ~~completed, as specified in subdivision (c):~~

35 ~~(m) The city, county, or city and county shall reimburse the~~
36 ~~department, the California regional water quality control board,~~
37 ~~and the local agency for costs incurred in reviewing or approving~~
38 ~~cleanup or remedial action plans pursuant to this section:~~

39 ~~52208. (a) If a city, county, or city and county undertakes an~~
40 ~~action to remedy or remove, or to require others to remedy or~~

1 remove, including compelling a responsible party through a civil
2 action to remedy or remove, a release of hazardous substance, any
3 responsible party or parties shall be liable to the city, county, or
4 city and county for the costs incurred in the action. A city, county,
5 or city and county may not recover the costs of goods and services
6 that were not procured in accordance with applicable procurement
7 procedures. The amount of the costs shall include the interest on
8 the costs accrued from the date of expenditure and reasonable
9 attorney's fees and shall be recoverable in a civil action. Interest
10 shall be calculated based on the average annual rate of return on
11 a city's, county's, or city and county's investment of surplus funds
12 for the fiscal year in which costs were incurred.

13 (b) The only defenses available to a responsible party shall be
14 the defenses specified in subdivision (b) of Section 25323.5 of the
15 Health and Safety Code.

16 (c) A city, county, or city and county may recover any costs
17 incurred to develop and to implement a cleanup or remedial action
18 plan approved pursuant to Sections 52206 and 52207, to the same
19 extent the department is authorized to recover those costs. The
20 scope and standard of liability for cost recovery pursuant to this
21 section shall be the scope and standard of liability under the
22 Comprehensive Environmental Response, Compensation, and
23 Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.)
24 as that act would apply to the department; provided, however, that
25 any reference to hazardous substance therein shall be deemed to
26 refer to hazardous substance as defined in subdivision (c) of Section
27 52205.

28 (d) An action for recovery of costs of a remedy or removal
29 undertaken by a city, county, or city and county under this section
30 shall be commenced within three years after completion of the
31 remedy or removal.

32 (e) The action to recover costs provided by this section is in
33 addition to, and is not to be construed as restricting, any other
34 cause of action available to a city, county, or city and county.

35 (f) Except as provided in subdivision (m) of Section 52207,
36 notwithstanding any other provision of state law or policy, a city,
37 county, or city and county that undertakes and completes a remedial
38 action, or otherwise causes a remedial action to be undertaken and
39 completed pursuant to Sections 52206 and 52207, shall not be
40 liable, based on its ownership of property after a release occurred,

1 for any costs that any responsible party for that release incurs to
2 investigate or remediate the release or to compensate others for
3 the effects of that release.

4 ~~52209. Except as provided in Section 52207, nothing in this~~
5 ~~chapter shall limit the powers of the State Water Resources Control~~
6 ~~Board or a California regional water quality control board to~~
7 ~~enforce Division 7 (commencing with Section 13000) of the Water~~
8 ~~Code.~~

9 *SEC. 2. Section 33459 of the Health and Safety Code is*
10 *amended to read:*

11 33459. For purposes of this article, the following terms shall
12 have the following meanings:

13 (a) "Agency" includes a former redevelopment agency as
14 defined in Section 33003 and a city, county, or city and county.

15 (a)

16 (b) "Department" means the Department of Toxic Substances
17 Control.

18 (b)

19 (c) "Director" means the Director of Toxic Substances Control.

20 (c)

21 (d) "Hazardous substance" means any hazardous substance as
22 defined in subdivision (h) of Section 25281, and any reference to
23 hazardous substance in the definitions referenced in this section
24 shall be deemed to refer to hazardous substance, as defined in this
25 subdivision.

26 (d)

27 (e) "Local agency" means a single local agency that is one of
28 the following:

29 (1) A local agency authorized pursuant to Section 25283 to
30 implement Chapter 6.7 (commencing with Section 25280) of, and
31 Chapter 6.75 (commencing with Section 25299.10) of, Division
32 20.

33 (2) A local officer who is authorized pursuant to Section 101087
34 to supervise a remedial action.

35 (e)

36 (f) "Qualified independent contractor" means an independent
37 contractor who is any of the following:

38 (1) An engineering geologist who is certified pursuant to Section
39 7842 of the Business and Professions Code.

1 (2) A geologist who is registered pursuant to Section 7850 of
2 the Business and Professions Code.

3 (3) A civil engineer who is registered pursuant to Section 6762
4 of the Business and Professions Code.

5 ~~(f)~~

6 (g) “Release” means any release, as defined in Section 25320.

7 ~~(g)~~

8 (h) “Remedy” or “remove” means any action to assess, evaluate,
9 investigate, monitor, remove, correct, clean up, or abate a release
10 of a hazardous substance or to develop plans for those actions.
11 “Remedy” includes any action set forth in Section 25322 and
12 “remove” includes any action set forth in Section 25323.

13 ~~(h)~~

14 (i) “Responsible party” means any person described in
15 subdivision (a) of Section 25323.5 of this code or subdivision (a)
16 of Section 13304 of the Water Code.

17 *SEC. 3. Section 33459.1 of the Health and Safety Code is*
18 *amended to read:*

19 33459.1. (a) (1) An agency may take any actions that the
20 agency determines are necessary and that are consistent with other
21 state and federal laws to remedy or remove a release of hazardous
22 substances on, under, or from property within a project area *or*
23 *property within its jurisdiction that previously was within the*
24 *jurisdiction of a former redevelopment agency*, whether the agency
25 owns that property or not, subject to the conditions specified in
26 subdivision (b). Unless an administering agency has been
27 designated under Section 25262, the agency shall request cleanup
28 guidelines from the department or the California regional water
29 quality control board before taking action to remedy or remove a
30 release. The department or the California regional water quality
31 control board shall respond to the agency’s request to provide
32 cleanup guidelines within a reasonable period of time. The agency
33 shall thereafter submit for approval a cleanup or remedial action
34 plan to the department or the California regional water quality
35 control board before taking action to remedy or remove a release.
36 The department or the California regional water quality control
37 board shall respond to the agency’s request for approval of a
38 cleanup or remedial action plan within a reasonable period of time.

39 (2) The agency shall provide the department and local health
40 and building departments, the California regional water quality

1 control board, with notification of any cleanup activity pursuant
2 to this section at least 30 days before the commencement of the
3 activity. If an action taken by an agency or a responsible party to
4 remedy or remove a release of a hazardous substance does not
5 meet, or is not consistent with, a remedial action plan or cleanup
6 plan approved by the department or the California regional water
7 quality control board, the department or the California regional
8 water quality control board that approved the cleanup or remedial
9 action plan may require the agency to take, or cause the taking of,
10 additional action to remedy or remove the release, as provided by
11 applicable law. If an administering agency for the site has been
12 designated under Section 25262, any requirement for additional
13 action may be imposed only as provided in Sections 25263 and
14 25265. If methane or landfill gas is present, the agency shall obtain
15 written approval from the California Integrated Waste Management
16 Board prior to taking that action.

17 (b) Except as provided in subdivision (c), an agency may take
18 the actions specified in subdivision (a) only under one of the
19 following conditions:

20 (1) There is no responsible party for the release identified by
21 the agency.

22 (2) A party determined by the agency to be a responsible party
23 for the release has been notified by the agency or has received
24 adequate notice from the department, a California regional water
25 quality control board, the Environmental Protection Agency, or
26 other governmental agency with relevant authority and has been
27 given 60 days to respond and to propose a remedial action plan
28 and schedule, and the responsible party has not agreed within an
29 additional 60 days to implement a plan and schedule to remedy or
30 remove the release that is acceptable to the agency and that has
31 been found by the agency to be consistent, to the maximum extent
32 possible, with the priorities, guidelines, criteria, and regulations
33 contained in the National Contingency Plan and published pursuant
34 to Section 9605 of Title 42 of the United States Code for similar
35 releases, situations, or events.

36 (3) The party determined by the agency to be the responsible
37 party for the hazardous substance release entered into an agreement
38 with the agency to prepare a remedial action plan for approval by
39 the department, the California regional water quality control board,
40 or the appropriate local agency and to implement the remedial

1 action plan in accordance with an agreed schedule, but failed to
2 prepare the remedial action plan, failed to implement the remedial
3 action plan in accordance with the agreed schedule, or otherwise
4 failed to carry out the remedial action in an appropriate and timely
5 manner. Any action taken by the agency pursuant to this paragraph
6 shall be consistent with any agreement between the agency and
7 the responsible party and with the requirements of the state or local
8 agency that approved or will approve the remedial action plan and
9 is overseeing or will oversee the preparation and implementation
10 of the remedial action plan.

11 (c) Subdivision (b) does not apply to either of the following
12 agencies:

13 (1) An agency taking actions to investigate or conduct feasibility
14 studies concerning a release.

15 (2) An agency taking the actions specified in subdivision (a) if
16 the agency determines that conditions require immediate action.

17 (d) An agency may designate a local agency in lieu of the
18 department or the California regional water quality control board
19 to review and approve a cleanup or remedial action plan and to
20 oversee the remediation or removal of hazardous substances from
21 a specific hazardous substance release site in accordance with the
22 following conditions:

23 (1) The local agency may be so designated if it is designated as
24 the administering agency under Section 25262. In that event, the
25 local agency, as the administering agency, shall conduct the
26 oversight of the remedial action in accordance with Chapter 6.65
27 (commencing with Section 25260) and all provisions of that chapter
28 shall apply to the remedial action.

29 (2) The local agency may be so designated if cleanup guidelines
30 were requested from a California regional water quality control
31 board, and the site is an underground storage tank site subject to
32 Chapter 6.7 (commencing with Section 25280) of Division 20, the
33 local agency has been certified as a certified unified program
34 agency pursuant to Section 25404.1, the State Water Resources
35 Control Board has entered into an agreement with the local agency
36 for oversight of those sites pursuant to Section 25297.1, the local
37 agency determines that the site is within the guidelines and
38 protocols established in, and pursuant to, that agreement, and the
39 local agency consents to the designation.

1 (3) A local agency may not consent to the designation by an
2 agency unless the local agency determines that it has adequate
3 staff resources and the requisite technical expertise and capabilities
4 available to adequately supervise the remedial action.

5 (4) (A) Where a local agency has been designated pursuant to
6 paragraph (2), the department or a California regional water quality
7 control board may require that a local agency withdraw from the
8 designation, after providing the agency with adequate notice, if
9 both of the following conditions are met:

10 (i) The department or a California regional water quality control
11 board determines that an agency's designation of a local agency
12 was not consistent with paragraph (2), or makes one of the findings
13 specified in subdivision (d) of Section 101480.

14 (ii) The department or a California regional water quality control
15 board determines that it has adequate staff resources and
16 capabilities available to adequately supervise the remedial action,
17 and assumes that responsibility.

18 (B) Nothing in this paragraph prevents a California regional
19 water quality control board from taking any action pursuant to
20 Division 7 (commencing with Section 13000) of the Water Code.

21 (5) Where a local agency has been designated pursuant to
22 paragraph (2), the local agency may, after providing the agency
23 with adequate notice, withdraw from its designation after making
24 one of the findings specified in subdivision (d) of Section 101480.

25 (e) To facilitate redevelopment planning, the agency may require
26 the owner or operator of any site within a project area *or its*
27 *jurisdiction* to provide the agency with all existing environmental
28 information pertaining to the site, including the results of any Phase
29 I or subsequent environmental assessment, as defined in Section
30 25200.14, any assessment conducted pursuant to an order from,
31 or agreement with, any federal, state or local agency, and any other
32 environmental assessment information, except that which is
33 determined to be privileged. The person requested to furnish the
34 information shall be required only to furnish that information as
35 may be within their possession or control, including actual
36 knowledge of information within the possession or control of any
37 other party. If environmental assessment information is not
38 available, the agency may require the owner of the property to
39 conduct an assessment in accordance with standard real estate

1 practices for conducting phase I or phase II environmental
2 assessments.

3 *SEC. 4. Section 33459.3 of the Health and Safety Code is*
4 *amended to read:*

5 33459.3. (a) Notwithstanding any other provision of law,
6 except as provided in Section 33459.7, an agency that undertakes
7 and completes an action, or causes another person to undertake
8 and complete an action pursuant to Section 33459.1, as specified
9 in subdivision (c), to remedy or remove a hazardous substance
10 release on, under, or from property within a redevelopment project,
11 in accordance with a cleanup or remedial action plan prepared by
12 a qualified independent contractor and approved by the department
13 or a California regional water quality control board or the local
14 agency, as appropriate, pursuant to subdivision (b), is not liable,
15 with respect to that release only, under Division 7 (commencing
16 with Section 13000) of the Water Code or Chapter 6.5
17 (commencing with Section 25100), Chapter 6.7 (commencing with
18 Section 25280), Chapter 6.75 (commencing with Section
19 25299.10), or Chapter 6.8 (commencing with Section 25300), of
20 Division 20 of this code, or any other state or local law providing
21 liability for remedial or removal actions for releases of hazardous
22 substances. If the remedial action was also performed pursuant to
23 Chapter 6.65 (commencing with Section 25260) of Division 20,
24 and a certificate of completion is issued pursuant to subdivision
25 (b) of Section 25264, the immunity from agency action provided
26 by the certificate of completion, as specified in subdivision (c) of
27 Section 25264, shall apply to the agency, in addition to the
28 immunity conferred by this section. In the case of a remedial action
29 performed pursuant to Chapter 6.65 (commencing with Section
30 25260) of Division 20, and for which the administering agency is
31 a local agency, the limitations on the certificate of completion set
32 forth in paragraphs (1) to (6), inclusive, of subdivision (c) of
33 Section 25264 are limits on any immunity provided for by this
34 section and subdivision (c) of Section 25264.

35 (b) Upon approval of any cleanup or remedial action plan,
36 pursuant to applicable statutes and regulations, the director or the
37 California regional water quality control board or the local agency,
38 as appropriate, shall acknowledge, in writing, within 60 days of
39 the date of approval, that upon proper completion of the remedial

1 or removal action in accordance with the plan, the immunity
2 provided by this section shall apply to the agency.

3 (c) Notwithstanding any provision of law or policy providing
4 for certification by a person conducting a remedial or removal
5 action that the action has been properly completed, a determination
6 that a remedial or removal action has been properly completed
7 pursuant to this section shall be made only upon the affirmative
8 approval of the director or the California regional water quality
9 control board or the local agency, as appropriate. The department,
10 California regional water quality control board, or local agency,
11 as appropriate, shall, within 60 days of the date it finds that a
12 remedial action has been completed, notify the agency in writing
13 that the immunity provided by this section is in effect.

14 (d) The approval of a cleanup or remedial action plan under this
15 section by a local agency shall also be subject to the concurrent
16 approval of the department or a California regional water quality
17 control board when the agency receiving the approval was formed
18 by the same entity of which the local agency is a part.

19 (e) Upon proper completion of a remedial or removal action,
20 as specified in subdivision (c), the immunity from agency action
21 provided by the certificate of completion provided pursuant to
22 subdivision (c) of Section 25264 and the immunity provided by
23 this section extends to all of the following, but only for the release
24 or releases specifically identified in the approved cleanup or
25 remedial action plan and not for any subsequent release or any
26 release not specifically identified in the approved cleanup or
27 remedial action plan:

28 (1) Any employee or agent of the agency, including an
29 instrumentality of the agency authorized to exercise some, or all,
30 of the powers of an agency within, or for the benefit of, a
31 redevelopment project *or its jurisdiction* and any employee or
32 agent of the instrumentality.

33 (2) Any person who enters into an agreement with an agency
34 for the redevelopment of property, if the agreement requires the
35 person to acquire property affected by a hazardous substance
36 release or to remove or remedy a hazardous substance release with
37 respect to that property.

38 (3) Any person who acquires the property after a person has
39 entered into an agreement with an agency for redevelopment of
40 the property as described in paragraph (2).

1 (4) Any person who provided financing to a person specified
2 in paragraph (2) or (3).

3 (f) Notwithstanding any other provision of law, the immunity
4 provided by this section does not extend to any of the following:

5 (1) Any person who was a responsible party for the release
6 before entering into an agreement, acquiring property, or providing
7 financing, as specified in subdivision (e).

8 (2) Any person specified in subdivision (a) or (e) for any
9 subsequent release of a hazardous substance or any release of a
10 hazardous substance not specifically identified in the approved
11 cleanup or remedial action plan.

12 (3) Any contractor who prepares the cleanup or remedial action
13 plan, or conducts the removal or remedial action.

14 (4) Any person who obtains an approval, as specified in
15 subdivision (b), or a determination, as specified in subdivision (c),
16 by fraud, negligent or intentional nondisclosure, or
17 misrepresentation, and any person who knows before the approval
18 or determination is obtained or before the person enters into an
19 agreement, acquires the property or provides financing, as specified
20 in subdivision (e), that the approval or determination was obtained
21 by these means.

22 (g) The immunity provided by this section is in addition to any
23 other immunity of an agency provided by law.

24 (h) This section does not impair any cause of action by an
25 agency or any other party against the person, firm, or entity
26 responsible for the hazardous substance release which is the subject
27 of the removal or remedial action taken by the agency or other
28 person immune from liability pursuant to this section.

29 (i) This section does not apply to, or limit, alter, or restrict, any
30 action for personal injury, property damage, or wrongful death.

31 (j) This section does not limit liability of a person described in
32 paragraph (3) or (4) of subdivision (e) for damages under the
33 Comprehensive Environmental Response, Compensation, and
34 Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

35 (k) This section does not establish, limit, or affect the liability
36 of an agency for any release of a hazardous substance that is not
37 investigated or remediated pursuant to this section or Chapter 6.65
38 (commencing with Section 25260) of Division 20.

39 (l) The immunity provided for by this section is only conferred
40 if both of the following apply:

1 (1) The action is in accordance with a cleanup or remedial action
2 plan prepared by a qualified independent contractor and approved
3 by the department or a California regional water quality control
4 board or the local agency, as appropriate, pursuant to subdivision
5 (b).

6 (2) The remedial or removal action is undertaken and properly
7 completed, as specified in subdivision (c).

8 (m) The agency shall reimburse the department, the California
9 regional water quality control board, and the local agency for costs
10 incurred in reviewing or approving cleanup or remedial action
11 plans pursuant to this section.

12 *SEC. 5. Section 33459.8 of the Health and Safety Code is*
13 *amended to read:*

14 33459.8. If an agency undertakes any action to remedy or
15 remove a release of hazardous substances on, under, or from
16 property within a project area *or property within its jurisdiction*
17 *that previously was within the jurisdiction of a former*
18 *redevelopment agency*, the agency shall, *if it is required to have*
19 *a redevelopment plan*, amend its redevelopment plan and follow
20 the same procedure, as specified, and the legislative body is subject
21 to the same restrictions as provided for in Article 4 (commencing
22 with Section 33330), for the adoption of a redevelopment plan, if
23 the agency determines that as a result of the remedial or removal
24 action, it will also be taking any of the following actions:

- 25 (a) Proposing to add new territory to ~~the~~ a project area.
- 26 (b) Increasing either the limitation on the amount of funds to
27 be allocated to the agency or the time limit on the establishing of
28 loans, advances, and indebtedness established pursuant to
29 subdivisions (1) and (2) of Section 33333.2.
- 30 (c) Lengthening the period during which the redevelopment
31 plan is effective.
- 32 (d) Merging project areas.
- 33 (e) Adding significant additional capital improvement projects.